

Application No. 10/668,637
Response dated August 24, 2007
Reply to Office Action of July 27, 2007

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REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Office Action mailed on July 27, 2007, and the references cited therewith.

No claims are amended or added, claims 1-34, 36, 44, and 47 have been canceled; as a result, claims 35, 37-43, 45, 46, and 48-71 are now pending in this application.

Election of Species

The Office Action asserted that an election of one of the following species was required under 35 USC 121:

Species: One and More than one atrium bordering by a multiple units.

The species are independent or distinct because a multiple units boundary by one or more than one atrium. Applicant thanks Examiner Nguyen for his generous time in discussing this matter with the Applicant and in his identification of those claims in which he had a specific issue in making his election (namely claims 69-71).

For the Election of Species requirement, Applicant provisionally elects, with traverse, claims 35-68 for prosecution.

The Election of Species is traversed on the basis that the claims of the application as originally filed included the term "an atrium" (original claim 35) and the term an is to be construed as meaning "one or more atriums" unless explicitly stated to the contrary.

Specifically, in determining the meaning of an indefinite article "a" or "an" in patent language, the Court of Appeals for the Federal Circuit has repeatedly emphasized that those words carry the meaning of "one or more" in claims containing the transitional phrase "comprising." *KCJ Corp. v. Kinetic Concepts*, 223 F.3d 1351, 1356 (Fed.Cir.2000); *see also Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192

Rev. 12/06

Page 9 of 11

Application No. 10/668,637
Response dated August 24, 2007
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F.3d 973, 977 (Fed.Cir.1999); *Abtox, Inc. v. Exitron Corp.*, 122 F.3d 1019, 1023 (Fed.Cir.1997); *North Am. Vaccine, Inc. v. American Cyanimid Co.*, 7 F.3d 1571, 1575-76 (Fed.Cir.1993). For example, in *Kinetic Concepts*, the Court stated that "Unless the claim is specific as to the number of elements, the article 'a' receives a singular interpretation only in rare circumstances when the patentee evinces a clear intent to so limit the article." *Kinetic Concepts*, 223 F.3d at 1356.

Applicant did not evince a clear intent to so limit the term atrium to the singular and accordingly, it is Applicant's view that the Examiner should have searched and examined this case upon this basis. In fact, the application is directed to clear show multiple atriums. Figures 7 and 8 clear show multiple atriums both horizontally arranged and vertically arranged and claims 41 and 42 also indicate the intent that the use of "an atrium" meant one or more.

Further, if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits. M.P.E.P. §803. Additionally, the Election of Species is traversed on the basis that an Election of Species is optional. M.P.E.P. §806.

Finally, it is submitted that Applicant should not be required to incur the additional costs associated with the filing of multiple applications in order to obtain protection for the claimed subject matter.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the Election of Species and that claims 35, 37-43, 45, 46 and 48-71 be examined on the merits together.

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 236-0121 to facilitate prosecution of this matter.

CERTIFICATE UNDER 37 C.F.R. §1.8: The undersigned hereby certifies that this correspondence is being transmitted to the United States Patent Office facsimile number (571) 273-8300 on

8/24/2007

Sarah L Reinhard

Name

Sarah L Reinhard

Signature

Respectfully Submitted,
Jonathan T. Miller

By Applicant's Representatives,
Brooks, Cameron & Huebsch, PLLC
1221 Nicollet Avenue, Suite 500
Minneapolis, MN 55403

By:

Jeffery L. Cameron
Jeffery L. Cameron
Reg. No. 43,527

Date:

8/24/07